

**In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division**

In the matter of:

BEVERLY D. GREENE
(Chapter 13 Case 97-41093)

Debtor

BEVERLY D. GREENE

Plaintiff

v.

JOE ADDISON MOTORS

Defendant

Adversary Proceeding

Number 97-4086

FILED
at 2 O'clock & 50 min P.M.
Date 6-27-97
MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia

MEMORANDUM AND ORDER

The above captioned matter came on for trial on June 20, 1997. After hearing evidence I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

This is the second time Plaintiff has filed for relief under Chapter 13 of the Bankruptcy Code. Plaintiff's first case, number 96-42925, was filed on November 15, 1996, and was dismissed at the hearing on confirmation of the proposed plan.

Immediately after the dismissal of Plaintiff's first case, Defendant repossessed the 1985 Chevrolet Caprice automobile which was collateral for Plaintiff's loan with Defendant.

Plaintiff has again filed a petition for relief under Chapter 13 of the Bankruptcy Code. After filing, Plaintiff instituted the instant action for turnover.

Plaintiff testified that she did not appear for her previous confirmation hearing because she received no notice of the same and that payments were not made because she was not employed. Plaintiff is now employed through Manpower, a temporary agency.

Plaintiff's current plan would pay to the Chapter 13 Trustee the sum of \$92.00 per month for a period of sixty (60) months. At this rate, Defendant could expect

to receive a maximum of \$37.00 monthly through August 1998 and a maximum of \$87.00 per month thereafter until the claim is paid. Defendant's claim amount is \$2,656.64.

CONCLUSIONS OF LAW

In a petition for turnover the burden rests upon debtor to establish that the vehicle in question is necessary for an effective reorganization and that the interests of the party in possession are adequately protected. In this case, Debtor has established that proper insurance coverage can be obtained and that payments are being made to the Chapter 13 Trustee in a timely manner. Here, however, the burden of establishing adequate protection is not met.

Debtor's plan, as shown above, would pay Defendant's claim over the entire life of the plan, a period of five years. By that time Defendant's collateral would be over 15 years old. This does not meet the burden of adequate protection.

Furthermore, at the figures set out in the schedules submitted by Debtor, Debtor must make payments of at least \$112.00 per month to fund secured creditors and administrative claims with no dividend whatsoever. Not only does Debtor's budget demonstrate no ability to make such a payment, the failure to provide for the same

completely eviscerates whatever adequate protection might be available to Defendant.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT
IS THE ORDER OF THIS COURT that the Debtor's Complaint for Turnover is denied.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 24th day of June, 1997.